

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6
7 MOTORS LIQUIDATION COMPANY, Case No. 09-50026(REG)

8
9 Debtor.

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11
12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, New York

15
16 July 1, 2015

17 10:19 AM

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23 B E F O R E :

24 HON ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Motion Filed by Wilmington Trust Company, as
2 GUC Trust Administrator and Trustee, for an Order Granting
3 Authority (A) to Exercise New GM Warrants and Liquidate New
4 GM Common Stock, and (B) to Make Corresponding Amendments to
5 The GUC Trust Agreement

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25 Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 THE COURT: GM Motors Liquidation.

3 MR. MARTORANA: Good morning, Your Honor, Keith
4 Martorana of Gibson, Dunn & Crutcher on behalf of Motors
5 Liquidation Company GUC Trust.

6 THE COURT: Okay. Mr. Martorana, I know others
7 had filed objections which may have been withdrawn. Is
8 Mr. Shaw in the courtroom? I don't see him. Okay. And of
9 course there were files by Mr. Weisfelner and Mr. Weintraub.
10 But I gather, Mr. Martorana, that the issues have been
11 narrowed or elongated in some respects?

12 MR. MARTORANA: Yes, that is correct, Your Honor.

13 As you noted with respect to Dr. Shaw we are
14 prepared to go forward. That issue has not been resolved.

15 With respect to the responses that are filed by
16 the ignition switch plaintiffs, uncertain non-ignition
17 switch plaintiffs, as well as the joinder that was filed by
18 the pre-closing accident plaintiffs, where we have come out
19 is the following.

20 The plaintiffs -- both sets of plaintiffs withdraw
21 any objection to the relief that the GUC Trust is seeking
22 today, which is the motion to sell the securities and
23 convert them into cash.

24 The affirmative relief sought by the plaintiffs,
25 which is the stay of any future GUC Trust distributions

1 pending the appeal, has been adjourned.

2 We had initially spoken to your chambers and I
3 believe we got July 30th at 9:45, but I understand and I'll
4 let others speak, I understand there may be a request to
5 move that to the following week if your chambers -- if that
6 works for Your Honor.

7 And then in the interim the parties plan to work
8 on a potential global resolution to the plaintiffs' issues
9 with respect to the GUC Trust assets, not involving
10 necessarily New General Motors, this is currently -- we're
11 talking about potential framework for a global resolution
12 between plaintiffs and the GUC Trust.

13 I'll pause there to see if anyone has anything
14 else to say.

15 THE COURT: Okay.

16 MR. STEEL: Good morning, Your Honor, Howard
17 Steel, Brown Rudnick, designated counsel to the ignition
18 switch plaintiffs and certain non-ignition switch
19 plaintiffs.

20 Your Honor, we don't disagree with Mr. Martorana's
21 recap. I think it goes without saying during the
22 intervening period the GUC Trust (indiscernible) agreed that
23 no distributions will be made of GUC Trust assets.

24 MR. MARTORANA: That's correct, Your Honor.

25 MR. STEEL: And in terms of scheduling on the

1 affirmative request for stay I do think there is a conflict
2 with the July 30th date, and the first or second week of
3 August may be more appropriate given peoples' schedules, if
4 the Court is available.

5 THE COURT: Okay. And I take it, Mr. Steel,
6 you're comfortable, as I would be, unless you have an
7 objection, with Mr. Martorana simply having made you the
8 assurance on the record that the GUC Trust is voluntarily
9 going to refrain from making distributions during this
10 period of time?

11 MR. STEEL: Yes, Your Honor, we're comfortable
12 with his word.

13 THE COURT: Okay. And I'm comfortable as well.
14 Anybody else want to be heard? Mr. Martorana?

15 MR. MARTORANA: And just to be clear, Your Honor,
16 we will contact your chambers to work on a further adjourned
17 date, but we do want to be back here as soon as possible,
18 because we do want resolution to this issue and the GUC
19 Trust does want to be free to make distributions at some
20 point in the future. So we'll --

21 THE COURT: And you're talking about what I'd
22 call, for lack of a better word, a Phase II.

23 Phase I is liquidating the securities and
24 converting them to cash and accomplishing your tax event, if
25 that's not the improper word.

1 MR. MARTORANA: Correct. No, that we're hoping to
2 get relief on today.

3 THE COURT: Which I will grant you today given the
4 resolution.

5 And then you're working on Phase II, which would
6 be something that would permit you to get distributions out
7 to your creditors but which is a matter of greater concern
8 to the tort plaintiff community.

9 MR. MARTORANA: I think that's right.

10 To be clear, Your Honor, during this 30 plus day
11 period the idea is to hopefully work towards a more global
12 resolution of the entire appeal process with respect to GUC
13 Trust assets. If we cannot reach a resolution during that
14 time, and it's possible that if we come up with a framework
15 that works we may be, you know, seeking to file a motion for
16 a settlement in that respect and further adjourning what is
17 currently scheduled for July 30th. If we can't, if none of
18 that works out what we want to do is come back on the papers
19 that have already been filed by the plaintiffs and the reply
20 by the GUC Trust to just deal with the issue of a stay
21 pending appeal, and we'd like to be able to present at that
22 time why we don't think a stay pending appeal is
23 appropriate, assuming that we can't reach a more global
24 resolution.

25 THE COURT: Okay. Fair enough.

1 Now you mentioned the appeal, Mr. Martorana, I
2 know you and Ms. Rubin have some stake in this appeal. I
3 have the benefit of having Mr. Steinberg and Mr. Weisfelner
4 and Mr. Weintraub here.

5 Your motion is granted under the terms that you
6 propose, Mr. Martorana. I'm going leave it to you and the
7 others to ascertain how it's best papered and if they can
8 lead to have express reservation of rights in it that's fine
9 with me.

10 While I have everybody here I would just like to
11 get an update of where things stand on the appeal in terms
12 of a motion for leave for appeal before the circuit, which I
13 think is required, but I haven't seen yet, and/or any other
14 filings or whatever.

15 I don't know if you're the best guy to tell me
16 that, Mr. Martorana, I see you have your colleague,
17 Ms. Rubin, here, I see Mr. Weisfelner behind you, we have
18 the whole array of the usual suspects. So come on up for a
19 second and give me an update guys.

20 MR. MARTORANA: Could I just ask one
21 clarification, Your Honor, before we move on to that?

22 THE COURT: Of course.

23 MR. MARTORANA: We submitted an order, and in fact
24 we submitted a revised proposed order which does -- on a
25 substantive level does really nothing more than enhance the

1 flexibility in the sale process for the GUC Trust.

2 My question is obviously we'd like to get that
3 entered as soon as possible. Would it be okay if we
4 submitted that order and then if others feel strongly about
5 how we deal with the adjournment we could put that on a
6 separate order? Is that -- would that work?

7 THE COURT: I want to be sure that I understand
8 what you're asking me to do.

9 You had originally asked for leave to liquidate
10 your securities, which by reason of the narrowness of that
11 request I had always regarded that as a no-brainer. As I
12 expected the plaintiffs said, well we don't care about your
13 liquidating the securities but we do care about you
14 distributing the proceeds of that securities and we want
15 reservations of rights in the deal that you just announced
16 to me.

17 MR. MARTORANA: Right.

18 THE COURT: Now the first half is that what you're
19 talking about in this proposed order?

20 MR. MARTORANA: That's correct. The proposed
21 order, and I'll let others speak if they think differently,
22 but the proposed order addresses nothing other than the
23 authority to liquidate the securities.

24 THE COURT: Okay. Then I want to invite
25 Mr. Weisfelner or Mr. Steel and Mr. Weintraub to say whether

1 if I give you -- so order the record to say you got full
2 reservation of rights with respect to distributions does
3 that skin the cat or do you want Mr. Martorana's order
4 modified to say that in baby talk in writing?

5 MR. WEISFELNER: Your Honor, I can't imagine that
6 we care.

7 THE COURT: Okay.

8 MR. WEISFELNER: If he wants the order entered the
9 way he wants the order entered so long as the record is so
10 ordered and based on his representations we don't have an
11 issue.

12 THE COURT: Okay. Does that meet your needs,
13 Mr. Martorana?

14 MR. MARTORANA: Yes, it does, Your Honor.

15 THE COURT: Okay, good. I'm so ordering the
16 record. You guys got a full reservation of rights on
17 distributions.

18 MR. MARTORANA: Thank you, Your Honor.

19 THE COURT: And I also have your earlier assurance
20 that you gave me on the order as well, Mr. Martorana.

21 MR. MARTORANA: That's right, Your Honor.

22 THE COURT: Okay, fair enough.

23 So now I'd like to get an update on the appeal,
24 and while we're at it on the state of the briefing on the
25 appellate motion and anything else that I may need to deal

1 with.

2 MR. WEISFELNER: Your Honor, I think the catch
3 word is a state of confusion, and let me try and unpack
4 that.

5 There were any number of notices of appeal filed
6 with respect to Your Honor's April 15th decision and
7 subsequent judgment. To the best of my recollection those
8 notices of appeal were filed on behalf of our plaintiffs,
9 Mr. Weintraub's plaintiffs, the Groman (ph) plaintiffs, the
10 GUC, trust, and unitholders, and New GM.

11 In addition we had a notice of appeal filed by
12 Mr. Peller (ph) on behalf of -- I can't remember which of
13 his three or four different clients.

14 UNIDENTIFIED SPEAKER: Elliott and Susick (ph).

15 MR. WEISFELNER: Elliott and Susick.

16 Thereafter there was a motion for reconsideration
17 filed by Mr. Peller on behalf of other of his clients.

18 UNIDENTIFIED SPEAKER: Bledsoe (ph).

19 MR. WEISFELNER: Bledsoe, thanks.

20 And as far as we all read the rules the filing of
21 the --

22 THE COURT: This being 8006(g)?

23 MR. WEISFELNER: Correct. And I think everyone
24 here shares the same opinion that the filing of the motion
25 for reconsideration in effect puts all of the appellate

1 process into, for lack of a better term, a (indiscernible),
2 and that all the appellate procedures are, for lack of a
3 better term, frozen until such time as the motion for
4 reconsideration is resolved since there is no final order.

5 Nevertheless, Mr. Peller sought to apply to the
6 second circuit to petition the second circuit. I'm not even
7 sure what his petition requests, because on the one hand he
8 talks about a direct appeal to the second circuit, I think
9 he goes so far as the cite to some of Your Honor's
10 determinations in the decision or judgment with regard to
11 the necessity or propriety of going to the second circuit,
12 but then at the end of his petition Mr. Peller indicates
13 that he has no objection to the matter going to the district
14 court in the first instance.

15 I think Your Honor knows that -- and as a
16 consequence I know that we have filed a motion to intervene
17 in Mr. Peller's petition, which we understood procedurally
18 was required were we to desire as we did to comment on the
19 petition before the second circuit. I believe our
20 intervention has been successful or is at least pending.
21 As --

22 THE COURT: Is that -- pause please,
23 Mr. Weisfelner. Is that considered to be a separate motion
24 that the circuit has to decide to grant or deny leave to
25 intervene so you can then be heard on his motion for leave

1 to appeal?

2 MR. WEISFELNER: I believe that's correct, Your
3 Honor.

4 THE COURT: Continue.

5 MR. WEISFELNER: And then we've also substantively
6 responded to the petition, even though it doesn't
7 affirmatively stake out a position on where the appeal ought
8 to go to as between the second circuit and the district
9 court. We've indicated our views respectfully that
10 notwithstanding Your Honor's certification that we believe
11 the matter is more appropriately addressed in the first
12 instance by the district court.

13 Other than that I believe that New GM as of Monday
14 likewise threw in on the petition, Mr. Steinberg will tell
15 you the procedural posture of New GM's position, but I think
16 as a matter of substance New GM has indicated that it
17 believes that the appellate process ought to proceed in the
18 first instance before the second circuit.

19 There are any number of no strike, no objection
20 GUC Trust related pleadings that have been filed by various
21 of the plaintiffs, including us, following the procedures
22 outlined in the judgment, and by virtue of an omnibus
23 request I believe all of our no strike, no objection GUC
24 Trust pleadings are the subject of an omnibus motion to
25 withdraw the reference, which is currently pending before

1 Judge Furman I believe by virtue of assignment.

2 So, I think, Your Honor, what the parties are in
3 effect are waiting for is a resolution of the motion for
4 reconsideration.

5 THE COURT: And at such time as that motion were
6 decided would that untie the knot in many or all respects?

7 MR. WEISFELNER: We believe so.

8 THE COURT: All right. Let me get other people to
9 comment and tell me whether they have any problems with what
10 you said or they want to supplement it. Mr. Steinberg.

11 MR. STEINBERG: Your Honor, I essentially agree
12 with what Mr. Weisfelner has said, but I do want to add a
13 couple other things.

14 One is that I think Mr. Peller was as clear as
15 sometimes he is, but by petitioning the second circuit for a
16 direct appeal he had stated that that was his preferred
17 relief, and that's what he had done.

18 The response on the Bledsoe pleadings, which are
19 the pleadings for reconsideration, are due a week from this
20 coming Friday, and so we will be responding to that
21 reconsideration motion. I don't know if there's a reply,
22 but then Your Honor will have it in front of you.

23 THE COURT: Did you stipulate to a right to reply?
24 Because motions for reconsideration don't even require a
25 response by the guy in your position unless the court

1 otherwise orders.

2 MR. STEINBERG: Yeah. We did not stipulate for a
3 reply. There is already a draft of the reply, which we'll
4 be filing on a timely basis. I do think that --

5 THE COURT: Well, I was saying that Peller's reply
6 to what you submit.

7 MR. STEINBERG: I'm sorry. We did not stipulate
8 to Peller's reply, we will be doing a response that will be
9 filed on Friday.

10 THE COURT: Which is still a week from Friday.

11 MR. STEINBERG: That's correct.

12 THE COURT: Okay.

13 MR. STEINBERG: The other thing, Your Honor, is
14 that I think most sides have filed the designation for the
15 record on appeal and statement of issues on appeal as well,
16 but I do think that when you untie the knot what'll actually
17 happen again is that the notices of appeal and the
18 designations of the record will all happen again, because I
19 think everybody understands the rule to be that once all the
20 argument positions have been solidified and there is
21 actually a judgment for the second circuit to consider
22 that's the real time when people should have been filing the
23 notice of appeal, the designation for the record on appeal,
24 and the certification. And maybe the parties will agree to
25 accelerate that process because they've already done the

1 work, and if Your Honor doesn't touch your decision then I
2 think no one has a changed position on it. But there is
3 that lag because that -- Mr. Peller's position required the
4 restart and the same time periods again.

5 I will note just to -- the Bledsoe plaintiffs,
6 which are the people who move to reargue, include the
7 Elliotts for a different car. So Mr. Peller in this case,
8 just like --

9 THE COURT: What there are two cars?

10 MR. STEINBERG: They had two cars.

11 THE COURT: All right.

12 MR. STEINBERG: So the Elliotts have appealed
13 directly to the second circuit with respect to one car and
14 move to reargue with respect to a different car.

15 THE COURT: Uh-huh. Okay.

16 MR. STEINBERG: And we'll try to explain why we
17 think that happened when we file our reply papers.

18 THE COURT: Okay. Ms. Rubin, I gather you have a
19 protective cross-appeal?

20 MS. RUBIN: Yes, Your Honor. If I may be heard
21 briefly?

22 THE COURT: Yes.

23 MS. RUBIN: Your Honor, just to clarify, you had
24 mentioned earlier the rule that you felt governed the state
25 appellate proceedings while Mr. Peller's motion was pending.

1 I understand that's Rule 8002(e), because his motion to
2 amend the judgment is one of the contemplated motions in
3 that rule.

4 In terms of the recitation of the history that
5 Mr. Weisfelner and Mr. Steinberg have given you I have no
6 disagreement with that other than to add a couple of
7 additional items.

8 Tomorrow the GUC Trust and the unitholders will be
9 filing their own cross-petition to the second circuit for
10 direct appeal to the second circuit. We will largely echo
11 the points made by Mr. Steinberg and New GM in their
12 petition but add some additional points.

13 You are correct to say that our appeal is a
14 conditional cross-appeal. In the event that the equitable
15 mootness holding is disturbed, vacated, or reversed in any
16 way we have a number of issues that we have indicated in our
17 statements of issues on appeal, which was filed Monday, that
18 we would like to have the circuit hear.

19 The final thing that I would say is that there are
20 two motions to withdraw the reference to Your Honor right
21 now. One implicates only the California and Arizona
22 actions, known in the judgment as the state actions. The
23 GUC Trust is obviously not a party to that.

24 With respect to what Mr. Weisfelner called the
25 omnibus motion to withdraw the reference on the other hand

1 the GUC Trust asset pleadings are implicated in that and the
2 GUC Trust will want to be heard on that as well.

3 We've been having conversations with Mr.
4 Weisfelner and his team about extending our time to respond
5 to that motion to withdraw the reference before Judge
6 Furman.

7 THE COURT: Okay. Anybody have anything further
8 to add?

9 MR. STEINBERG: I do, Your Honor.

10 Your Honor, you had indicated to us that you'd
11 like to be periodically updated as to what is going on in
12 other courts that may impact what you're doing as well too,
13 so we will be filing tomorrow some of the letters that have
14 been exchanged and sent out last night to Judge Furman
15 relating to briefing issues where there's an ensuing battle
16 as to who will hear what issues between Your Honor and Judge
17 Furman. So you'll have the full picture of that.

18 THE COURT: That's helpful, Mr. Steinberg. As a
19 point of the personal privilege one other thing.

20 I think I observed everything as Mr. Weisfelner
21 and you and Ms. Rubin were explaining it to me, but if you
22 can confirm what you stated to me by weaving it into that
23 letter, to the extent it's not already there, that would be
24 helpful to me. And since I assume Jesse Furman is copied on
25 these letters I think it'll help him as well.

1 MR. STEINBERG: So we will do -- we will follow
2 the process of whatever letter we're drafting we will
3 coordinate with the people all here today so they can sign
4 off on the letter. So this will be a joint letter.

5 THE COURT: I assume it'll be merely repeating
6 what I heard from Mr. Weisfelner and you and Ms. Rubin, but
7 it'll give you a chance to satisfy yourselves that
8 everything you wanted to convey did get conveyed when I
9 didn't give you advanced notice that I'd be asking you this
10 and would also lay it out for both his benefit and mine so
11 we have something to look at very easily to understand
12 what's happening and when.

13 MR. STEINBERG: Sure. Thank you, Your Honor.

14 THE COURT: Thank you.

15 Okay. Anybody else, anything?

16 All right, thank you very much, folks, have a
17 good day.

18 (Whereupon these proceedings were concluded at 10:40
19 AM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

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